

In this section of the Analysis of Impediments report, past and future action steps to affirmatively further fair housing pursuant to fair housing laws, are evaluated and discussed respectively. DHCD is committed to affirmatively further fair housing in Massachusetts, including being a leader in promoting inclusive housing opportunities and other fair housing principles. The recommendations of this section were guided by the Data Analysis findings, contemporary research, and the recommendations of the Fair Housing Advisory Panel.

## **1. Inadequate Enforcement of Fair Housing Laws Persist, and There is Not Sufficient Education About Fair Housing Throughout the Housing Delivery System**

In spite of statutorily authorized fair housing enforcement entities and fair housing requirements imposed throughout the housing delivery system upon developers, governmental agencies, local permit granting authorities, marketing agents and real estate professionals, noncompliance, overt discrimination, and actions which have discriminatory impacts persist. Leadership relative to fair housing is essential.

The FHAP recommended that DHCD and its partners should continue to heighten awareness of fair housing through education of staff and throughout the housing delivery system. Technical expertise exists in many facets of fair housing (including the laws, responsibilities of landlords and management companies, real estate agents, lenders, as well as accessibility requirements) but there is no standardized educational tool available. It further recommended that DHCD should review existing training and develop a uniform standard, or provide examples of materials that delineate fair housing roles, responsibilities, and recourse.

### **Action Step: Provide education on fair housing laws and incorporating fair housing principles into DHCD's programs and activities**

DHCD agrees that internal and external education and training on an ongoing basis are necessary. DHCD will consider recommendations from stakeholders with respect to materials, topics, and trainers, and will collaborate with organizations to provide education and outreach and to identify appropriate funding resources.

#### **A. *Increase DHCD staff knowledge of fair housing laws and obligations***

As a state agency, DHCD has a key role in furthering fair housing. One of the ways in which DHCD can effectuate change is through the way its staff communicates and emphasizes fair housing to its partners. This can only happen if there is adequate training of DHCD staff and the staff of DHCD administered programs regarding fair

housing obligations and affirmative duties using up-to-date analysis of data. Fair housing training will include discussion of DHCD's Fair Housing Mission Statement and Principles and their implementation in the state's subsidized housing programs. DHCD will also incorporate discussion on fair housing education opportunities and the integration of fair housing principles into programs and activities in its regularly scheduled meetings with its quasi-public partners.

*B. Facilitate education for community stakeholders on fair housing laws, including predatory lending practices and housing discrimination against mobile voucher holders*

DHCD and its partners will facilitate the education of community stakeholders on fair housing laws by incorporating fair housing information into existing materials and outreach, and by partnering with or supporting other agencies and organizations that conduct fair housing trainings. Awareness of legal resources for fair housing violations will also be promoted. The Legal Framework in Section 1 of this document provides a background on legal recourse for housing discrimination.

Fair housing violations that are more subtle and/or less likely to be perceived as illegal should be emphasized by organizations that conduct outreach. For example, stakeholders should be made aware of the illegality of discrimination based on familial status<sup>1</sup> and receipt of public assistance under Chapter 151B. Furthermore, homebuyers, housing providers, and municipalities should be made aware of fair housing violations such as steering, blockbusting, redlining, and other unfair or deceptive lending practices that may have a disproportionate impact on racial/ethnic minorities and other protected groups. This education is essential to mitigating discriminatory rental and sales practices that are creating inequity in housing opportunities and costs, particularly in communities with substantial minority presence and in communities where people of color are under-represented.

*C. Action Step: Continue to educate communities about Chapter 40S*

Due to the nature of the education funding formula, some communities have level education funding regardless of changes in local school district enrollment. Accordingly, there is a perception at the local level that housing development significantly increases school costs paid by local residents.

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<sup>1</sup> *Do We Know More Now?: Trends in Public Knowledge, Support and Use of Fair Housing Law.* U.S. Department of Housing and Urban Development. February 2006 (finding that, inconsistent with published testing results, only 4% of survey respondents representing individuals in households with children (n=404) perceived discrimination with familial status as the basis, contrasted with 9% of disabled persons perceiving discrimination with disability as the alleged basis, 9% of Hispanics perceiving discrimination with race/ethnicity as the alleged basis, and 22% of African Americans (n=410) perceiving discrimination with race/ethnicity as the alleged basis).

The FHAP note that it is incumbent on DHCD to create an awareness of the connection between education funding and barriers to housing development, and to dispel misconceptions concerning the incremental increase in operating costs attributable to increased school enrollment. Addressing capital costs when new schools are needed is an important priority.

To assuage local concerns about increased educational costs resulting from the development of higher density affordable housing, Massachusetts General Laws Chapter 40S offers education funds to communities developing a Chapter 40R project. DHCD's significant efforts in this area are ongoing, and DHCD will continue to work with the governor's office and legislative leaders. DHCD will also continue to educate communities about Chapter 40S and budgetary concerns relating to a proposed increase to multi-family housing. However, fiscal concerns that are cited by communities to mask discriminatory practices and/or discriminatory motives cannot and will not be tolerated.

## **2. There Exists a Persisting Lack of Knowledge Regarding the Housing Rights of People with Disabilities, and Ongoing Segregation and Stigmatization of People with Disabilities**

The FHAP noted that there is not a centralized position which maintains information on housing rights for people with disabilities. [Author's Note: all program staff administer state programs in accordance with the fair housing laws, and specialized programs do exist to address the special housing needs of persons with disabilities. In addition, MassAccess is an online housing registry of affordable housing opportunities that are accessible to persons with disabilities. DHCD supports the ongoing development of MassAccess]. The FHAP further noted that segregated housing models and group homes dominate the current market, that transportation and sidewalks are necessary components to housing people with disabilities, and that smart growth encourages re-use which may pose a challenge to developing integrated housing.

The FHAP recommended that DHCD should include in its fair housing technical assistance information and educational tools that relate specifically to housing for people with disabilities. It further recommended that DHCD promote integrated housing to meet a diversity of housing needs, and particularly, require a diversity of housing under MGL c. 40R. [Author's note: The regulations to MGL Chapter 40R were developed contemporaneously with the recommendations of the FHAP, and those regulations (which mirror the statute) require that MGL Chapter 40R smart growth zoning districts allow a diversity of housing by right.] The FHAP further recommended that DHCD support universal design and visitability standards and reinforce all

accessibility and visitability requirements in new construction and rehabilitation projects, including those selected for development or re-development in smart growth locations. And while smart growth does encourage the re-use of existing buildings, all such buildings must comply with accessibility standards. The FHAP recommended that DHCD continue to support targeted funding streams that create and improve accessible and special needs housing.

**Action Step: Incorporate materials on the rights of disabled persons in fair housing education and continue to support housing for disabled persons that is integrated and located in areas that are accessible to and serve the needs of disabled persons**

DHCD will include information in its fair housing technical assistance and educational tools that relate specifically to housing for persons with disabilities. DHCD will also provide materials on state and federal fair housing accessibility requirements, and encourage its quasi-public partners to do the same.

Additionally, state financing and incentive allocations for new construction and rehabilitation projects will continue to take into account the needs of disabled persons. DHCD and its state and quasi-public agency partners will ensure accessibility as provided by law in all publicly funded housing. DHCD will work with its partners, including fair housing centers, to respond to allegations of non-compliance with applicable state and/or federal accessibility requirements, and DHCD will appropriately refer complaints of non-compliance to the Massachusetts Commission Against Discrimination.

With respect to integration of disabled households in the community, states must provide community-based services, where appropriate and reasonable, for disabled persons otherwise entitled to institutional services pursuant to Title II of the ADA and the U.S. Supreme Court decision in *Olmstead v. L.C.*<sup>2</sup>

Although DHCD sought to improve housing choice for disabled persons even prior to the *Olmstead* decision through a number of programs, it continues to expand such opportunities in collaboration with its partners. It administers programs for disabled persons that involve mobile vouchers, such as the state funded Alternative Housing

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<sup>2</sup> 527 U.S. 581 (1991) (holding that States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. As a basis for its decision, the court relied on the ADA provisions requiring public entities to refrain from discrimination and specifically identifying "segregation" of disabled persons as a form of discrimination).<sup>2</sup>

Vouchers Program (AHVP), and the federally funded Section 8 Housing Choice Voucher/Mainstream Housing Program and the Section 8 Housing Choice Voucher/Designated Housing Programs, that enable disabled persons to select their housing location. Pursuant to state regulation, local housing authorities must provide a priority to AHVP participant applicants, otherwise eligible and qualified, living in a non-permanent transitional housing subsidized by AHVP.<sup>3</sup>

DHCD also administers state funds targeted for disabled persons, such the Facilities Consolidation Fund that finances community-based housing, and Chapter 689 special needs housing for persons with physical disabilities, mental illness, or mental retardation. Additionally, DHCD administers the Community Based Housing (CBH) program, which administers loans to non-profit developers and owners that create long term integrated housing for low income disabled persons. Funding in 2006 for the CBH program was close to \$3.0 million dollars. The state Affordable Housing Trust Fund also provides a funding preference for housing that serves disabled persons, and an additional \$2.0 million dollars was made available exclusively for housing for persons with disabilities in 2006.

Based on need and funding capacity, DHCD will continue to fund housing for disabled households across a range of incomes. DHCD and its partners will continue to conduct reviews and make recommendations with respect to funding optimization of low income housing programs for disabled persons.<sup>4</sup> Thorough, ongoing review is of particular relevance to disabled voucher holders and applicants, as the disabled population is disproportionately extremely low income and faces substantial rental market barriers even with voucher assistance.

To further equal enjoyment of disabled persons in housing opportunities, DHCD will take into consideration Universal Design and visitability<sup>5</sup> principles in its funding

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<sup>3</sup> 760 C.M.R. 5.09.

<sup>4</sup> For example, in 2007, pursuant to the federal “Money Follows the Person” initiative, states may apply to CMS to seek federal matching funds to assist institutionalized disabled persons seeking services as they move out into the community.

<sup>5</sup> Universal design and visitability are not required by fair housing laws but are important to providing economic efficiency, safety, and equal enjoyment of housing for disabled persons. “Universal design” denotes the principle of designing units that are livable for most people regardless of ability or disability. For example, switches and controls that are placed to be reachable by disabled persons, or adjustable closet rods and shelves, are features of universal design. “Visitability” refers to the principle that housing units have sufficient accessibility in common areas for disabled persons in wheelchairs and mobility devices to visit. Visitability includes features such as zero-step entrances, at least half a bath on the main floor, and interior doors with passage space.

evaluation criteria. The CBH program currently supports design preferences for developments that promote universal design and visitability.

### **3. Affordable, Accessible Units may be Occupied by Households Which Do Not Require Accessible Features**

Evidence indicates that subsidized accessible units are sometimes occupied by households which do not require accessible features, and further, that there is lack of knowledge of available units by households which do require accessible features.

The FHAP recommended that DHCD and its partners in the housing delivery system should ensure that all people searching for accessible units are informed of availability of such units. In addition, lease addenda must be employed to ensure that occupants of accessible units will be relocated to serve eligible tenants requiring an accessible unit.

#### **Action Step: Evaluate performance of local housing authorities and regional housing agencies on their effectiveness in finding and providing appropriate housing for disabled persons, as well as for families with children**

DHCD will continually monitor the programs it administers to ensure that households, including disabled households and families with children, are aware of opportunities to find housing that accommodates their needs. Such needs include housing that is adequately sized, contains physical and communication access, and is located near services that ameliorate the effects of physical and mental disabilities.

Currently, the Massachusetts Access Accessible Housing Registry provides disabled and low income persons information on available rental housing in Massachusetts. The MassAccess database primarily tracks accessible and affordable apartments throughout the Commonwealth. It is available online and is distributed via a computer network to Independent Living Resource Centers across Massachusetts. As reported by CHAPA, in 2005 MassAccess tracked the availability of more than 2,500 developments in Massachusetts, including nearly 13,000 accessible apartments, listed over 800 vacancies, and received approximately 3,000 visits to its website per month.<sup>6</sup> Programmatic information on special needs housing and related services can be found in DHCD's Consolidated Plan at <http://www.mass.gov/dhcd/Temp/05/05-09plan/default.htm> . DHCD also participates in the Department of by Health and Human Services' Virtual Gateway, which was designed in part to provide a central registry and coordination of available programs and services.

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<sup>6</sup> Citizens' Housing and Planning Association Annual Report 2005. <http://www.chapa.org/pdf/annualreport05.pdf>.

Moreover, as discussed below, data collection efforts will further inform DHCD as to the availability of housing that serves the needs of disabled persons and families with children. Continuous evaluation of local housing authority and regional housing agency efforts to curtail the use of handicap accessible units by non-disabled households is also needed and is ongoing.

DHCD will propose amending its regulations pertaining to LHAs to explicitly state the mandate for relocation of non-disabled households to non-accessible units upon availability, although it will balance the need to reasonably accommodate disabled persons without wheelchairs located in wheelchair accessible units. Proposed amended regulations would also require LHAs to report by project on the number of selected applicant households requesting an accessible unit (wheelchair and/or sensory), the number of said households that received the requested unit, and the total number of occupied accessible units.

#### **4. There is a Paucity of Data on Occupants of Subsidized Housing**

Data on affordable housing and its occupants is collected and analyzed inconsistently among programs, and data are not currently aggregated. In order to inform future decisions about the need for affordable housing opportunities by type and location, it is important to analyze the type of households served within particular existing developments, and within a geographical context to determine whether fair housing objectives are being met, or whether segregation is exacerbated. Thus, it is important to collect fair housing related demographic and socioeconomic data for subsidized housing developments and other housing assistance programs and analyze that data prior to making funding decisions to ensure fair housing goals are being achieved. Such analysis is an integral tool in deconcentrating poverty and promoting diversity, mobility, housing choice, and opportunity.

The FHAP recommended that DHCD and its partner agencies should collect data consistently among all programs in order to analyze the impact of public subsidy in achieving fair housing objectives. The results of such data analysis should be incorporated into funding decisions in order to direct financial resources to projects that promote fair housing.

**Action Step: Collect, analyze, and report on relevant data pertaining to racial/ethnic minorities and other protected classes in subsidized housing programs and report on DHCD fair housing initiatives**

DHCD maintains databases that include fair housing data for new housing

developments which are constructed with public subsidy. Furthermore, October 2006 legislation requires annual reporting on data collected on assisted housing units, as well as the methodology used, with the first report due to the legislature on or before December 31, 2007 and annually thereafter. Said data is statutorily required to include the following information on assisted units and recipients of rental assistance: the number, location, and type of units; the source and term of any and all state or federal subsidy for such housing units; the size of households in such housing units; income levels for such households in such housing units; the number of bedrooms per housing unit; unit accessibility for persons with disabilities; the race and ethnicity of the head of household in such housing units; and, the number of children under 18 years of age and under 6 years of age in such housing units. Pursuant to the legislation, DHCD shall use reasonable efforts to collect data upon turnover, rent re-determination or resale of housing units before the enactment date. This data will inform subsidizing agencies on current residential demographic characteristics in statewide housing programs.

The aforementioned data will also be used to ascertain whether all available subsidized housing resources serve Commonwealth residents equitably, and whether subsidized housing programs are deconcentrating minority and poverty concentrations, promoting racial and socioeconomic integration, to affirmatively further fair housing, and to inform future activities of DHCD and its partners.

Implementation of the data collection will be phased, as DHCD undertakes the formidable task of coordinating information and database systems across housing programs and housing agencies.

## **5. There is a Lack of Capacity within State Government to Address Fair Housing Issues**

There does not exist a centralized position within DHCD or other state agencies dedicated exclusively to fair housing, and thus it would be beneficial to develop more expertise and centralized information for easier public access and delivery.

The FHAP recommended that DHCD should advocate for funding to establish a Fair Housing Ombudsman position, and consistently incorporate fair housing principles in all of DHCD's programs and activities.

### **Action Step: Continue to incorporate fair housing principles in DHCD's programs and activities with the assistance of a fair housing specialist**

At the time the FHAP made this recommendation, no such centralized position existed.



However, in July 2006, DHCD hired a Fair Housing Specialist to: perform duties to analyze impediments to fair housing; draft an implementation plan for incorporating fair housing principles into DHCD programs and activities, subject to input from the Fair Housing Advisory Panel; and to analyze implementation of the plan. Subsequently, the fair housing position was relocated to the Office of the Chief Counsel, so as to further the compliance of DHCD and its partners with respect to fair housing obligations and policies.

## **6. Restrictive Local Zoning Frustrates the Ability to Achieve Fair Housing Objectives and Benefits throughout Massachusetts**

Restrictive local zoning requirements such as large lot requirements and the prohibition of multifamily housing increases the cost of such housing, particularly in more affluent communities, where lower-income families could benefit from better schools and services.

The FHAP recommended that DHCD should increase capacity and develop a long-term strategy beginning with education that evolves into a system of incentives and penalties. Notably, fair housing compliance and allowance of diverse housing developments is required under Chapter 40R, the Smart Growth Zoning law. DHCD should develop incentives and outreach to promote dense and diverse housing development, particularly under Chapter 40R.

### **Action Step: Promote fair housing access by reducing regulatory barriers to, and creating incentives for, regional equity in affordable housing**

A. *Continue promotion of Chapter 40B, Chapter 40R, inclusionary zoning, smart growth, and fair housing principles as tools for engendering equal housing opportunities throughout Massachusetts*

Policies such as inclusionary zoning, affordable housing development, and smart growth<sup>7</sup> development are important tools for furthering fair housing in Massachusetts by broadening housing opportunities for disadvantaged groups and by weakening barriers to desegregation at the regional, city/town, and neighborhood level. Land use regulations can be inclusive of minorities, disabled persons, and other groups that are disproportionately low income and/or disadvantaged in the housing market by increasing housing affordability (i.e., through infrastructure efficiency and housing

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<sup>7</sup> A principle of land development that promotes compact design, mixed and fair land use, open space, environmental preservation, and transportation access.

density) and access to public transit, jobs, schools, hospitals, and by decreasing proximity to health and safety hazards.<sup>8</sup>

A variety of Massachusetts policies have reduced zoning barriers, creating more affordable housing, and promoting smart growth. For example, the Massachusetts Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing in Massachusetts and to encourage the production of affordable housing in all communities in the Commonwealth by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions. Chapter 40B permits the development of affordable housing throughout the Commonwealth, superseding local zoning laws, when less than 10% of the community's housing stock is restricted to low or moderate income households, or when less than 1.5% of the municipality's total land area zoned for residential, commercial, or industrial use is composed of low and moderate income housing.<sup>9</sup> Furthermore, communities are encouraged to proactively ensure affordable housing under Chapter 40B by engaging in "planned production" pursuant to 760 C.M.R. 31.07.<sup>10</sup>

Despite its successes (see the Data Analysis section of this report), Chapter 40B alone cannot foster widespread and sufficient affordable housing. Local zoning bylaws and regulations that mandate or offer strong incentives for the development of affordable

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<sup>8</sup> Pendall, Rolf, Nelson, Arthur C., Dawkins, Casey J., and Gerrit J. Knapp. "Connecting Smart Growth, Housing Affordability, and Racial Equity." In *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs, pp. 219-246. Washington, D.C.: Brookings Institution Press, 2005.

<sup>9</sup> A condition for qualifying as a 40B development is that the housing be comprised of at least 25% of units affordable to household at or below 80% of the area median income, or 20% of units affordable to households at or below 50% of the median income. Qualified Chapter 40B housing must be deed restricted. If the local zoning board rejects the plan or imposes economically burdensome conditions, the developer may appeal to the State Housing Appeals Committee, which in turn assesses whether the denial or conditions are "consistent with local needs." General Laws c. 40B, § 20 defines "consistency with local needs" as being reasonable in view of the need for low and moderate income housing balanced against health, safety, environmental, design, open space, and other local concerns. There is a presumption that the need for affordable housing outweighs local concerns if less than ten percent of municipality's total housing units are subsidized low and moderate income housing units. See 760 CMR 31.07(1)(e); *Board of Appeals of Hanover v. H.A.C.*, 363 Mass. 339, 367, 294 N.E.2d 393, 413 (1973).

<sup>10</sup> Municipalities may participate in planned production by submitting an affordable housing plan to DHCD and producing housing in accordance with the plan. The key requirement of the affordable housing plan, before it can be approved by DHCD, is that it must include housing for a diverse population, including rental and home ownership opportunities for individuals, families, the elderly, and persons with disabilities. Generally, when at least 0.75% of year round housing units are produced within one calendar year, the municipality may request certification, and certification enables a local zoning board of appeals decision to be upheld by the Housing Appeals Committee.

housing are necessary throughout the Commonwealth, particularly in high cost areas. For example, municipalities such as Boston have adopted inclusionary zoning.<sup>11</sup> Municipalities employing inclusionary zoning must be careful to stay within the constitutional confines of due process, equal protection, and just compensation for regulatory takings.<sup>12</sup> Thus, educational outreach to municipalities is needed to provide viable models of mandatory inclusionary zoning. To this end, Massachusetts Housing Partnership has commissioned three reports on this topic, which may be accessed at: [http://www.mhp.net/housing\\_library/inclusionary\\_zoning.php](http://www.mhp.net/housing_library/inclusionary_zoning.php).

In addition to educating communities about inclusionary zoning, DHCD and its partners educate communities on the benefits of smart growth development.<sup>13</sup> Massachusetts General Laws Chapter 40R provides discretionary funding when communities adopt smart growth zoning districts, and again when they provide permits for housing that is affordable (to households below 80% of the area median income) in 20% or more of the units for at least 30 years. Unlike sprawl development, smart growth protects natural resources, broadens housing choice, and improves municipal finances by taking into consideration location, design and long-term costs. Smart growth also furthers fair housing access by expanding diversity of affordable housing opportunities. Pursuant to the 40R statute, smart growth zoning districts must allow a diversity of housing by right.

*B. Provide funding priorities to municipalities that advance fair housing access*

DHCD will continue to implement incentives for municipalities to incorporate fair housing principles into their housing and development policies. For example, as previously implemented under DHCD's Commonwealth Capital program, priorities may be given to community programs that affirmatively further housing, i.e., through: analyses of impediments to fair housing; bylaws creating fair housing ordinances and

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<sup>11</sup> Boston has adopted an Inclusionary Development Policy, created in February 2000 by executive order, which requires that 13% of all units in a housing development of 10 or more units be comprised of one-half "moderate income" (80% AMI) households, and one-half "middle income" (120% AMI) households. To offset the economic burden on developers, the policy provides for increased density and other incentives, and enables developers to opt for offsite construction or cash-out fee alternatives. As of February 2005, 606 units were created as a result of Boston's Inclusionary Development Policy. For further information, see *Building Better: Recommendations for Boston's Inclusionary Policy*. Massachusetts Association of Community Development Corporations. May 2006.

<sup>12</sup> Kayden, Jerold S, *Inclusionary Zoning and the Constitution*; Blaesser, Brian W., *Inclusionary Housing: There's a Better Way*. National Housing Conference Policy Review, Vol. 2, Issue 1. January 2002.

<sup>13</sup> DHCD offers a Smart Growth Toolkit on its website at <http://www.mass.gov/dhcd/components/SCP/default.htm> to assist municipalities in assessing their development options.

fair housing commissions; fair housing education and outreach; housing counseling; promotion of handicap accessibility and universal design; promotion of expanded access to lending opportunities for low income households; and/or actions to monitor local compliance with the Community Reinvestment Act (CRA) and the Equal Credit and Opportunity Act (ECOA).<sup>14</sup>

*C. Increase community accountability in mitigating impediments to fair housing access*

DHCD plans to examine pro-active strategies for re-invigorating Executive Order 215.<sup>15</sup> Such strategies may include critically reviewing proposals for adoption and amendment of zoning ordinances and bylaws, as DHCD must be notified of such proposals. DHCD would apply Executive Order 215 procedures to its programs, as well as the programs of its quasi-public partners, that provide discretionary funding to cities and towns.

DHCD will also consider requiring jurisdictions requesting state funding to submit an Analysis of Impediments to Fair Housing Report to the Commonwealth, in manner and purpose that is substantially equivalent to HUD requirements, to aid in the prevention and redress of unlawful disparate impacts on protected classes.

*D. Foster partnerships between affordable housing programs, land conservation groups, and developers as a means for improving regional housing equity*

In an effort to increase affordable housing opportunities in suburban areas, DHCD will continue to promote partnerships between land conservation, affordable housing, and developer groups by creating networking opportunities and assisting in the funding of development. On an ongoing basis, DHCD undertakes outreach directed at said groups as well as at municipalities, which includes the provision of successful models of affordable housing in communities desiring to protect open space.

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<sup>14</sup> The CRA and ECOA promote fair housing access and benefit communities by improving homeownership and housing related credit opportunities for those in underserved low-income and minority areas.

<sup>15</sup> Executive Order 215 provides that "It should be the general policy of state agencies not to award (development-related) discretionary funds to cities or towns which have been determined to be unreasonably restrictive of new housing growth." Such determination, as provided by Executive Order 215, is made based upon the Secretary's evaluation of evidence. The community may then formulate a strategy to facilitate development of affordable housing, and may request assistance from the Department. Pursuant to said Order, once a strategy has been developed and approved by the Secretary and the local boards and commissions responsible for its implementation, the Secretary shall notify all appropriate state funded agencies that the city or town is not unreasonably restrictive of new housing growth.

## **7. Discriminatory Lending Practices Persist in the Private Mortgage Market**

There is a prevalence of subprime lending and predatory lending which disproportionately impact low- and moderate-income households, and particularly households of color.

The FHAP noted while the private lending market is outside the purview of DHCD, it can partner with other agencies to eradicate discriminatory mortgage lending. Partnering could include, but not be limited to, supporting educational and outreach efforts, and to encourage the enforcement of lending regulations, as well as the Massachusetts Predatory Loan Practices Act.

### **Action Step: Collaborate with partners, such as banks and lending institutions, on education pertaining to access to fair lending**

Fair housing access is severely compromised when banks and other lending institutions engage in discriminatory lending practices that result in the denial or discouragement of homeownership, or the loss of homeownership through foreclosure. Such discriminatory practices include applying different loan terms based on race/ethnicity, using neighborhood “stability” factors based on racial/ethnic composition to evaluate loans, recognizing “compensating factors” that favor White applicants with poor credit, and targeting low income, minority, elderly and other vulnerable households and communities for predatory loans. A further discussion on discriminatory lending practices and their effects can be found in the Legal Framework and Data Analysis sections of this report. DHCD will continue to reference relevant studies or reports on home sales and lending practices in Massachusetts as they relate to fair housing when it releases its Analysis of Impediments to Fair Housing reports.

DHCD will continue to support initiatives that protect potential and current homeowners. For example, DHCD offered support for Senate Bill 747 and House Bill 1290 pertaining to foreclosure protection. Furthermore, DHCD will continue to provide information on housing counseling resources, including counseling that pertains to predatory lending and foreclosure prevention. The Housing Consumer Education Centers, which receive funding through DHCD, provide such counseling services. DHCD has compiled a (non-exhaustive) listing of housing counseling resources, including the HCECs, on its website at <http://www.mass.gov/dhcd>.

DHCD and its partners will also continue to identify opportunities to support realtor associations, lending institutions, and other organizations in promoting fair lending education and in promoting fair lending access in underserved areas.

## **8. Lead Paint Contamination Limits Housing Choices for Families with Young Children**

HUD estimates that nationwide, 68 percent of the housing units built before 1940, 43 percent of those built between 1940 and 1959 and 8 percent of those built between 1960 and 1977 have significant lead-based paint hazards.

DPH records indicate that an average of 18,000 units are being inspected, and over 4,000 units are being treated, each year in Massachusetts. More than 90,000 units have already been delead<sup>16</sup> including a substantial portion of the state's public housing and assisted inventory. However, with a substantial number of units still "at risk," much work remains.

Continued support for lead paint removal programs and incentives is required to achieve the goal of removing all hazardous lead paint from the housing stock. In the past five years, an estimated 10,000 units annually have been de-leaded, or certified lead-safe as a result of inspections done by state-licensed inspectors. In the public sector, all state family public housing units were de-leaded, at a cost of approximately \$30 million. Further, all substantially renovated "family" (one bedroom or larger) units in DHCD's state and federal housing programs, including the federal HOME, CDBG (also subject to the HUD Lead-Safe Rule), and Tax Credit programs, and the state Housing Innovations Fund, Housing Stabilization Fund and Tax Credit programs have been de-leaded to meet Massachusetts requirements. Finally, all publicly assisted leased housing units – in both state and federal programs – are required to be de-leaded whenever children under six are present. These actions closely follow or exceed requirements in the HUD Lead-Safe Rule.

### **Action Step: Continue administration of Lead Paint Removal Program and increase lead paint education efforts**

Due to the disparate impact of lead paint hazards on lower income households, and the greater vulnerability of children within those households, continued funding efforts must be made to eradicate lead paint in housing. The disparate impact lead-based paint hazards have on low income families, especially in communities of color pose special concerns. DPH classifies 21 cities – home to more than one third of the state's low income children, and more than three quarters of its Black and Latino children – as high-risk communities for lead-based paint hazards.

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<sup>16</sup> DPH's database goes back to 1990. Nearly 40,000 letters of compliance have been issued to date (July 2004) as have 90,920 letters of initial compliance, which DPH estimates more accurately represents the number of units delead.

Currently, DHCD administers the Lead Paint Abatement Loan Program, created in 1993, which assists residential property owners in financing lead paint abatement (removal) and containment. The program applies only to owners of housing units where moderate or low income households reside or will reside after abatement or confinement. The state's lead program is substantially targeted to high risk communities, particularly to the private rental housing stock in those communities where low- and moderate- income households are likely to reside in units with significant hazards. All of the units where children with elevated blood levels (EBL) are identified are entered in the state case management system, which often results in an Order to Correct being issued. In addition, local code officials trained to perform lead determinations continue to conduct preliminary lead inspections and order full-scale inspections where needed. Finally, targeted public education campaigns continue and state supported lead counselors continue to assist any Massachusetts citizen seeking a lead safe home.

Information on deleaded units throughout the Commonwealth is maintained by the Massachusetts Department of Health. DHCD will incorporate information on tenant housing and fair housing rights, as well as deleading financing opportunities, with respect to lead paint in its future fair housing materials.

## **9. The Massachusetts Housing Market Has Been Characterized by Escalating Prices Over the Last Decade, Limiting Homeownership and Rental Opportunities for Low/Moderate Income Households. Developments with Expiring Use Restrictions Place the Current Affordable Housing Stock at Risk**

Inadequate supply of housing, caused in large part by restrictive zoning practices, coupled with ever-increasing construction costs have placed safe, decent, affordable housing opportunities out of reach for many individuals and families, as well as the elderly and those with disabilities.

The FHAP recommended that DHCD continue to advocate to increase the supply of housing through zoning reform and zoning relief to achieve a diverse and adequate supply of housing. Key components include Chapter 40B, (and increased capacity and efficiency at the Housing Appeals Committee) Chapter 40R, and other dense and compact, affordable housing development, particularly near transit. Transit proximity is an important component, since data show that vehicular access by low-and moderate-income families of color is extremely low, and proximity to transportation creates increased housing and economic opportunities. Additionally, national data indicates that higher transportation costs associated with residing in an outlying suburb and continuing to work near a city center outweighs the savings from lower rent or

mortgage payments.<sup>17</sup>

**Action Step: Continue to support and subsidize the production of affordable housing and community development, with an emphasis on promoting racially and economically integrated housing and neighborhoods**

A. *Continue to support incentives and funding for the regionally equitable development of housing that is affordable to a range of lower income households*

Recent reports have indicated that declining job growth and inadequate housing supply, and the appreciation of housing costs, are causing moderate income workers to move out of Massachusetts to seek more affordable housing.<sup>18</sup> The New England Public Policy Center recognizes that these trends are not only problematic for middle-income households, but also for very low-income households that are consequently being “squeezed out” of the rental and homeownership markets as moderate income households seek more affordable housing.<sup>19</sup>

From a fair housing access standpoint, the supply of affordable housing for low income households between the low/moderate and very or extremely low-income ranges, as well as for households with special needs, must also be considered. For example, as discussed in the Data Analysis section of this report, a large number of minorities, large families, and persons with disabilities have incomes between the very low and moderate income range. Other demographic groups face additional burdens in finding affordable housing. Large families face difficulty in finding appropriately sized affordable housing. Female-headed households with children and minorities are less likely to own homes than to rent them. Furthermore, many disabled individuals, while perhaps ineligible for

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<sup>17</sup> Lipman, Barbara J. *A Heavy Load: The Combined Housing and Transportation Burdens of Working Families*. Center for Housing Policy, October 2006 (finding that in 17 of 28 metro areas, average transportation costs for working families with households incomes between \$20,000 and \$50,000 are as high or higher than housing costs; in the Boston consolidated metro area, 30% of income was spent on transportation compared to 29% on housing ).

<sup>18</sup> See Bluestone, Barry. *Sustaining the Mass Economy: Housing Costs, Population Dynamics, and Employment*. Center for Urban and Regional Policy at Northeastern University. May 2006. See also, Glaeser, Edward L. *The Economic Impact of Restricting Housing Supply*. Rappaport Institute for Greater Boston, Harvard University. May 2006. See also, Sasser, Alicia, Zhao, Bo, and Darcy Rollins. *The Lack of Affordable Housing in New England: How Big a Problem? Why is it Growing? What Are We Doing About It?* New England Public Policy Center at the Federal Reserve Bank of Boston. Working Paper, 2006.

<sup>19</sup> See Sasser et al., supra note 18.



certain subsidized housing, may have high disability related costs and therefore are in need of more affordable and accessible housing.

DHCD's FY 2005-2009 Consolidated Plan and FY 2007 Action Plan identify the important objective of developing and maintaining an adequate supply of safe, decent housing that is affordable and accessible to residents with a *range* of income levels and household needs. See the FY 2005-2009 Consolidated Plan for further data on housing and community development needs assessment.

In addition to its public housing and rental assistance programs, DHCD administers various programs that provide funding for rental and ownership housing development and rehabilitation at various income levels. For example, the HOME program is a federal housing program through which DHCD typically administers funds for rental housing production and rehabilitation, first-time homebuyer housing production and first-time homebuyer development assistance. Rental programs are targeted to households earning less than 60% of area income and homebuyer programs are targeted to households with incomes below 80% of area median income (AMI). The Low Income Housing Tax Credit (LIHTC) program requires that at least 20% of the units be reserved for persons with incomes at/or below 50% AMI, or at least 40% of the units must be made affordable for persons with incomes at/or below 60% AMI. DHCD also administers the Community Services Block Grant (CSBG) program, which is a federally funded anti-poverty initiative that provides an array of services and activities to encourage self-sufficiency and to make permanent improvements in the lives of low-income families and individuals. Housing related services include affordable housing and homeownership opportunities and assistance to families and individuals at risk of homelessness.

MassHousing, the state's housing development finance agency, funds a variety of rental housing, homeownership and home repair programs. Several other quasi-public agencies fund the production and preservation of low and moderate income housing with technical assistance, pre-development loans and bridge financing, in addition to permanent loans. These include MassDevelopment, the Massachusetts Housing Partnership Fund, and the Community Economic Development Assistance Corporation. (Further information on state programs and expected activity and funding levels can be found in the FY 2007 Action Plan).

DHCD and quasi-public partner agencies will continue to formulate and coordinate funding strategies to increase the supply of affordable housing for low income households throughout the Commonwealth, ensuring accessible and appropriately sized units for disabled and larger families respectively. Continued efforts by DHCD and its quasi-public partner agencies are essential to preserve affordability of use restrictions.

Future development of affordable housing should not be primarily located in, or located proximately to,<sup>20</sup> areas of high poverty concentration, often concurrent with high minority concentration, which are likely to have poor education systems<sup>21</sup> and stunted job growth. A further discussion of localities in Massachusetts with high poverty and minority concentrations is found in the Data Analysis section of this report.

As such, DHCD will continue to critically examine funding opportunities across a range of incomes and locations, including those with local preferences, to ensure that concentrations of poverty and segregation patterns are not perpetuated or exacerbated. A further discussion on local selection preferences and the siting of affordable housing is contained below.

*B. Integrate affordable housing in areas that have, or will have through contemporaneous development, adequate community services and attributes*

Future state funding decisions are informed by the fact that towns with fewer services or attributes (referred to as “amenities”) may be less affordable than they appear because of the costs derived from the insufficiency of such amenities, as recently indicated by the Housing Affordability Initiative of the MIT Center for Real Estate.<sup>22</sup> Housing that is affordable to lower incomes are desirable in areas that are higher in community services or attributes, such as job opportunities, public transportation, quality education services, and open space, to expand both affordability and equity in housing opportunity. Community services or attributes are crucial to creating equity in quality of life and opportunity for upward mobility.

*C. Increase community development in low income areas*

Investment in community services and attributes should also be made in low income areas and in areas achieving desegregation, so as to promote equal opportunity, increase demand, and to preserve and further such desegregation.<sup>23</sup> However, if

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<sup>20</sup> See supra note 15.

<sup>21</sup> See e.g., Lee, Chungmei. *Racial Segregation and Educational Outcomes in Metropolitan Boston*. The Civil Rights Project at Harvard University. April 2004 (report asserting that in the Metropolitan Boston Area, minority segregated schools are high in poverty and unequal in quality, as indicated by lower test scores, lower high school completion rates, and lower shares of certified teachers).

<sup>22</sup> See <http://web.mit.edu/cre/research/hai/index.html> for further information.

<sup>23</sup> See e.g., Jackson, Tara D. *The Imprint of Preferences and Racial Attitudes in the 1990s: A Window into Contemporary Residential Segregation Patterns in the Greater Boston Area*. The Civil Rights Project at Harvard University. January 2004 (research indicating that Whites are less likely to prefer integration

affordable housing is not reserved for lower income households in such areas, an increase in amenities may eventually yield higher housing costs and displacement of minorities and other protected classes.

Nevertheless, many low income households may not or cannot move out of their high poverty areas because they do not have the financial means, the comfort level to live in communities they fear will be unwelcoming or discriminatory (particularly if they are racially dissimilar), or the desire to leave existing family and social networks behind. Thus, community development investments should be made in lower income and amenity areas to increase the potential for expanded job opportunities, improved schools, and better quality housing.

DHCD currently administers various programs that provide funding for community development for low income neighborhoods. DHCD and its quasi-public partners also provide funding for preservation of existing affordable units (see the FY 2007 Action plan for further programmatic information). DHCD will continue to fund such efforts and to explore new funding opportunities. Current community development programs include the Housing Stabilization Fund (HSF), which was created to support comprehensive neighborhood redevelopment efforts, and to help developers and municipalities acquire, preserve and rehabilitate affordable housing. HSF places a special emphasis on reusing foreclosed and distressed properties and on creating affordable homeownership opportunities. The Community Development Action Program (CDAG), funded by the Commonwealth, provides support for publicly owned or managed projects in areas where private investment will not otherwise occur without CDAG. The goal is to stimulate economic development activities that will attract and leverage private investment, create or retain long-term employment and revitalize distressed areas.

The Community Development Block Grant (CDBG) program is funded by the federal government through grants to cities and towns for housing and community and economic development for low and moderate income residents. The housing component of the CDBG program focuses on housing rehabilitation but various other CDBG funded projects have housing related components. The Community Development Fund (CDF) and Housing Development Support Program (HDSP) are components of the Massachusetts CDBG program. CDF provides funding to communities to benefit low and moderate income individuals, remove slums and blight or address a critical community need. HDSP provides funding that can be used for acquisition, rehabilitation, and site work pertaining to housing development, as well as related

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as it approaches the 50% White level, while African Americans and Latinos most prefer integration that is 50% White).

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infrastructure, if 51% of the units are affordable to and occupied by low and moderate income households.

State funding is also available to further housing and community development that benefits low and moderate income families. The Neighborhood Housing Services (NHS) assists residents and public/private entities to reinvest in urban neighborhoods in Boston, Cambridge, Chelsea, Quincy, and Springfield by rehabilitating housing and making it affordable for low and moderate-income families. The Individual Development Account (IDA) Program is a statewide program that will be available to income-eligible households (below 80% of area median income), with a preference given to persons/families residing in state-subsidized housing. IDAs are dedicated, matched savings accounts that are used to purchase a particular asset – often, a first home. IDAs, when combined with financial literacy education and program support services, offer powerful opportunities to break the cycle of poverty and contribute to greater economic independence. DHCD also administers The Community Services Block Grant (CSBG) is a federally funded, poverty reduction program that was created in 1964 to promote and provide an array of services and activities to encourage self-sufficiency and to make permanent improvements in the lives of low-income families and individuals.

D. *Continue to advocate statewide to mitigate zoning and affordability barriers*

DHCD will continue to conduct extensive technical assistance for communities and organizations. For example, DHCD is on the board of directors for the Citizen Planner Training Collaborative, which conducts workshops on Chapter 40B, 40R, inclusionary housing, planned production, and other zoning related issued. Through DHCD's Local Initiative Program (LIP), DHCD provides technical assistance and oversight in a variety of areas, including affirmative fair marketing and long-term affordability, of qualifying comprehensive permit projects and local action units. DHCD has also developed online materials for communities to utilize in creating affordable housing plans and in creating lotteries and affirmative fair marketing plans.

DHCD was recognized for its efforts in mitigating zoning and affordability barriers on August 10, 2006, when the US Department of Housing and Urban Development today presented the Massachusetts Department of Housing and Community Development with the *Robert L. Woodson, Jr. Award* for reducing burdensome regulations that unnecessarily inflate the cost of housing. Massachusetts was recognized by HUD as a national model in the effort to reducing unnecessary, outdated, and duplicative regulations that put the cost of housing out of reach for many Americans. A further discussion on increasing community accountability in mitigating impediments to fair housing access is found on pg. 110 of this document.

E. *Continue to require Affirmative Fair Marketing Plans, and further uniformity of requirements across programs*

Affirmative fair housing marketing plans are an important mechanism for attracting racially, ethnically, and economically diverse households to areas where they are less likely to rent or buy. Moreover, federal regulations require fair housing marketing plans under FHA subsidized and unsubsidized housing programs. Affirmative marketing plans must appeal to tenants and buyers of all races, nationalities, colors, religions, sexes, sexual orientations, disabilities, income sources, and familial, marital, and veteran statuses. Marketing is typically publicized through minority publications and media outlets. Factors such as local demographic composition should inform all fair housing marketing plans.

DHCD and its quasi-public agencies require funding recipients to adopt and implement affirmative fair marketing plans. DHCD and its partners will continue to monitor Chapter 40B developments so that they are not discriminatory in their selection criteria, and that they comply with affirmative fair marketing obligations and promote equal housing opportunity in compliance with fair housing laws. DHCD critically analyzes predominantly White communities that seek through local preference to favor local residents in the allocation of their 40B housing inventory, disallowing marketing plans that potentially limit opportunities for diversity and that transgress fair housing laws.

DHCD will be revising its Chapter 40B regulations to standardize and provide regulatory authority for Affirmative Fair Marketing Plan requirements across state programs. DHCD will also examine incorporating the following into said requirements:

- 1) To avoid a discouraging effect of marketing of local residency preferences, such marketing or advertising must also state that the use of residency preferences will not have the purpose or effect of delaying or otherwise denying admission to the program in violation of applicable civil rights laws;
- 2) Affordable use restrictions and the affirmative fair marketing plans must require that available affordable units will, whenever they become available, be listed with Boston's Metrolist if the property is located in the Metro Boston area, be listed on CHAPA's Mass Accessible Housing Registry website, and be listed with the Massachusetts Rehabilitation Commission if the units are accessible. (Author's Note: M.G.L. c. 151B 7A now requires that the owner give at least fifteen days notice of the vacancy of an accessible unit to the Massachusetts Rehabilitation Commission. Said section requires the Massachusetts rehabilitation commission to maintain a central registry of accessible apartment housing pursuant to M.G.L. Chapter 6 § 79. DHCD will make reference to this new requirement in its fair housing education and outreach to further assist

disabled consumers);

- 3) Project sponsors must certify to DHCD that they reported unit availability to the MetroList when submitting income verification and other reporting requirements;
- 4) DHCD programs will be required to submit an annual written assessment of affirmative fair marketing plan procedures and compliance for review; and
- 5) Evaluate results of data collection efforts to evaluate whether revised affirmative fair marketing plans are needed.

Should DHCD determine to incorporate the above (or other) affirmative fair marketing requirements into its programs, DHCD will also advise its quasi-public partners to take similar actions in their respective programs.

With respect to state-aided local housing authorities, DHCD will examine revising regulations governing fair marketing plans of local housing authorities to include the requirement that LHAs identify and review special efforts to attract applications not only from underrepresented minority groups, but also to disabled persons, families with children, and other low income groups that may be less likely to apply for housing without special outreach.

## **10. Inadequate Mobility Inhibits Achievement of Fair Housing Objectives, and Language Barriers Faced by Recent Immigrants Create an Increased Challenge to Mobility**

The FHAP noted that residency preferences are exclusionary and may have a discriminatory impact. However, although they may inhibit mobility among communities where affordable housing opportunities exist, they be necessary for projects to be approved locally. Furthermore, misunderstandings about available housing opportunities pervade, especially within low-income communities predominantly composed of people of color or recent immigrants. Inadequate transportation options exist in suburbs where affordable housing opportunities exist within high-performing school districts.

Acknowledging that residency preferences are often prerequisite to local approval of affordable housing developments, the FHAP recommended that DHCD uphold the Low Income Housing Tax Credit program requirements that disallow residency preferences.

In order to dispel misunderstandings about available housing opportunities, increased technical assistance, outreach, and education relative to the availability of affordable housing opportunities is essential. Particularly in high-poverty areas where low-income people of color and those with language barriers are concentrated, education regarding what income levels and credit and employment histories (as well as other information)

are required to access affordable rental and homeownership must be available. Studies have shown that such populations are less likely to perceive that they will be approved for a mortgage or will be eligible to purchase a home, even with appropriate income levels and credit and employment histories. Dispelling such notions will create mobility and will enhance opportunities for members of protected classes that previously perceived that they were foreclosed from housing opportunities (and other socioeconomic opportunities which attend them).

**Action Step: Promote mobility through information on housing opportunities and housing counseling, with attention to linguistically isolated households**

Mobile rental voucher programs are an important tool for promoting mobility, de-concentrating poverty, and redressing segregation. Based on the findings and the results of the MTO and Skinner/CCVP voucher programs in Boston, housing counseling and support services appear to be important facilitators of sustaining mobility among minority households away from lower income neighborhoods (see discussion in the Data Analysis section). The MTO study offers additional insight on the benefits of such mobility. Continued support and furtherance of mobility and housing counseling regarding diverse neighborhoods are needed to ensure similar successes for more families in Massachusetts. Pursuant to the shared goal of affirmatively furthering fair housing, all administering agencies in Massachusetts advocate for higher federal payment standards to engender success in the CCVP program and other mobility efforts.

DHCD will propose revising its regulations to be more consistent with relevant HUD requirements pertaining to PHAs administering Section 8 mobile vouchers. As part of the briefing of the selected family, PHAs must explain to families currently living in a high poverty census tract in the PHA's jurisdiction the possible advantages of moving to an area that does not have a high concentration of poor families (however, the PHA may not discourage a family from choosing to live in or outside the PHA jurisdiction).

DHCD will also evaluate current housing counseling resources (provided both within the agency and through other providers). In Massachusetts, housing counseling is largely undertaken by Housing Consumer Education Centers ("HCECs") which are located throughout Massachusetts in Boston, Framingham, Gardner, Hyannis, Kingston, Lowell, Pittsfield, Springfield, and Turner Falls, Massachusetts. HCECs provide information on a variety of topics to tenants, landlords, homeowners, and prospective buyers, including information on tenant rights and responsibilities, fair housing, Section 8 information for persons with disabilities, buying and financing a home, obtaining affordable homeownership, and protecting against lead paint in the home. Information is also accessible online at <http://www.masshousinginfo.org>.

After evaluating resources available to consumers, DHCD will formulate an implementation plan to meet consumer needs if gaps exist, or create a new resource. In addition, DHCD envisions an online resource to provide fair housing information to consumers so that tenants and potential homeowners are informed of counseling opportunities not only with respect to tenant fair housing rights, finding accessible housing and receiving assistive technology, and renting and buying in geographically diverse affordable housing markets, but also with respect to pre- and post-purchase homeownership financing, and avoiding steering, redlining, predatory lending, and other discriminatory sales and lending practices. Our goal is to provide resources on affordable homeownership, which should include the Section 8 Homeownership program, as well as the Home Modification program for persons with disabilities.

Given recent immigration trends in Massachusetts, it is essential that linguistically isolated households receive fair access to housing programs, including counseling and outreach, in their language of origin to the extent feasible. Outreach to linguistically isolated households will be guided by, *inter alia*, HUD's regulations on Title VI's prohibition against national origin discrimination for federal assistance recipients. HUD has offered a four-part reasonableness test for obligations of entities receiving federal financial assistance as follows: 1) the number or proportion of LEP (limited English proficiency) served or encountered in the eligible service population; 2) the frequency with which LEP individuals come into contact with the program; 3) the nature and importance of the program, activity, or service provided by the program; and 4) the resources available to the recipient and costs.<sup>24</sup>

### **Action Step: Evaluate Local Selection Preferences for Discriminatory Impacts**

Local selection preferences by housing agencies are permitted as a method for meeting local needs.<sup>25</sup> However, preferences must not yield discriminatory effects which violate state and federal fair housing laws.<sup>26</sup> Local housing authorities provide protected class

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<sup>24</sup> U.S. Department of Housing and Development *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*; Notice, Federal Register Vol. 72, No. 13, Monday January 22, 2007.

<sup>25</sup> *Meeting Local Housing Needs: A Practice Guide for Implementing Selection Preferences and Civil Rights Requirements in Affordable Housing Programs*. Citizens' Housing and Planning Association. September 2004. (citing 42 U.S.C. §1437d(c)(4) (federal public housing); 42 U.S.C. §1437f(o)(6)(A)(ii) (Section 8 Housing Choice Voucher Program); *MassHousing Tenant Selection Regulations*, Section III(E); *Guidelines for Housing Programs in which Funding is Provided Through a Non-Governmental Entity* ("40B NEF Guidelines"); *LIP Guidelines*. Massachusetts Department of Housing and Community Development.

<sup>26</sup> *Id.* (citing 24 C.F.R. §5.105(a); *Multi-Family Occupancy Handbook*, par. 4-6(C), pg. 4-12; M.G.L. ch. 121B, § 32; 760 C.M.R. § 47.08; see also *Investigation Procedures Manual for the Investigation and*



data to DHCD, which may be used to determine the existence of any discriminatory effects on protected classes resulting from tenant selection practices. Findings are required to be submitted to DHCD for evaluation.<sup>27</sup>

DHCD and its partners will continue to require and critically evaluate affirmative fair marketing plans in all programs, including provisions for local selection preferences, in all subsidy programs that it administers. Local selection preferences in predominantly White communities increase the risk of having a disparate impact on minorities, and are closely monitored. DHCD will critically examine its current implicit policy of permitting up to 70% local selection preference in its housing development programs, including the impact such a policy has over time, and will advise its quasi-public partners of the same.

DHCD is also currently examining its Section 8 regional tenant selection preferences for a potential disparate impact on minorities. January 2007 findings on an informal 2002 experiment of a fictional applicant on each of the eight regional waiting lists<sup>28</sup> has prompted DHCD to carefully scrutinize its Section 8 program and to identify the most appropriate response, which may include adopting a statewide waiting list.

## **11. Incorporate Fair Housing Principles in DHCD Programs and Activities. Greater Leadership is Required to Address Housing Discrimination**

The FHAP recommended that DHCD, through education and outreach, demonstrate the value and need for affordable housing, and particularly family housing and special needs housing. Additionally, it should disseminate data regarding the need for and impact of family, special needs, and age restricted housing.

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*Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (Title VI Manual) (quoting *New York Urban League*, 71 F. 3d 1031, 1037) (Discriminatory effects may be shown by employing "facts and statistics that 'adequately capture[d]' the impact of the city's plans on similarly situated members of protected and non-protected groups").

<sup>27</sup> Pursuant to 760 C.M.R. 4.08, DHCD shall from time to time review an LHA's tenant selection policies or practices with respect to minority households. DHCD shall determine, based on biennial reports by LHAs, whether the minority presence in LHA programs are significantly below the percentage of minorities in the general population of the city or town or in the general population of the applicable (primary) statistical area, whichever is greater. If minorities are found to be under-represented, DHCD shall require the LHA to develop and implement an appropriate written fair marketing plan.

<sup>28</sup> In 2002, the Massachusetts Law Reform Institute (MLRI) and DHCD engaged in a very informal experiment to track the selection waiting times for a fictional applicant that DHCD planed on each regional list on the same date and time. By January 2007, this fictional applicant had been selected by four of the eight regional agencies. The four agencies that have not selected the fictional applicant contain 2/3 of all applicants and a generally higher share of minorities.

The FHAP noted that it is essential to build consensus for fair housing practices and support for a diversity of housing stock and integrate the Fair Housing Mission Statement and Principles into programs. Such consensus building should include demonstrating the value and need for family and special needs housing, and to disseminate data relative to that need and its impact. In addition, the FHAP suggested that there has been inadequate consideration of fair housing principles in publicly funded programs and activities, such as Commonwealth Capital and the Principles of Sustainable Development. Since the FHAP was convened, both programs (and others) required demonstration (by specific example) of consistency with fair housing principles.

**Action Step: Promote regional equity and fair housing principles by linking housing, community, and transportation planning and development**

*A. Foster regional equity and fair housing principles through subsidized housing funding, planning, and development*

In order to achieve regional equity in housing and housing related opportunities and to avoid the creation or perpetuation of segregation and concentrated poverty, subsidized housing should be included in areas that are lower in poverty (see the Data Analysis section of this report for further discussion of high and low poverty areas). Such areas are more likely to have greater amenities like quality schools and other opportunities for upward mobility. Due to the connection between poverty and race/ethnicity discussed in the Data Analysis section of this report, poverty concentration must also be carefully considered when planning future development.<sup>29</sup> Methods for achieving equity in subsidized housing include creating subsidized housing in low poverty areas, and monitoring the locations where tenant based (mobile) vouchers are used for clustering by race/ethnicity, income, and other protected classes. Affirmative fair marketing to minority households and communities is imperative to ensure their opportunity to benefit from such regionally distributed housing.

Although planning for new housing development in poverty concentrated areas should be examined with a critical eye, it should not necessarily be disregarded.<sup>30</sup> Low-income

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<sup>29</sup> Consideration of poverty concentration should not only include the demographics of a particular neighborhood or municipality, but also the demographics of surrounding areas, to mitigate the migration of existing patterns from one location to another. For example, integrated neighborhoods may be more likely to achieve stability the greater their distance from a metropolitan area's primary area of minority concentration. See de Souza Briggs, Xavier. "More Pluribus, Less Unum?" *The Geography of Opportunity: Race and Housing Choice in Metropolitan America*, edited by Xavier de Souza Briggs, pp. 17-41. Washington, D.C.: Brookings Institution Press, 2005 (citing Ellen, Ingrid Gould. 2000. *Sharing America's Neighborhoods: Prospects for Stable Racial Integration*. Harvard University Press).

<sup>30</sup> See supra note 9 (citing HUD's project based Section 8 site selection standards).

neighborhoods may be appropriate settings for further affordable or mixed income housing development if there is substantial need, opportunity for rental mobility, contemporaneous planning for community development and other activity such as homeownership opportunity, and marketing towards families above the poverty level.<sup>31</sup>

DHCD will evaluate increasing points provided under the LIHTC program<sup>32</sup> and creating project siting criteria in other state programs to further increase fair housing access for diverse needs and promote development in low poverty areas, or, in higher poverty areas undergoing significant community revitalization or other local benefits (including employment, transit, and services).

DHCD will also carefully scrutinize program requirements so that they do not unintentionally contravene fair housing policies and obligations. For example, in its Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP), DHCD will evaluate whether decreasing points for projects with local support and other modifications to the QAP will mitigate unintended effects on fair housing access, such as disincentives for developers to site projects in low poverty communities that create impediments to multi-family and subsidized housing (see Data Analysis section for a discussion on LIHTC data).

To complement subsidized rental development, and to serve as a bridge towards upward mobility, homeownership opportunities for low income households will continue to be created in non-poverty concentrated areas, as well as in areas undergoing community revitalization and development relating to jobs, school improvements, and transportation. Currently, DHCD administers the Commonwealth's allocation of federal HOME funds for first-time buyer housing production and development for households with incomes below 80% of the median area income. Funding for the state's Soft Second Loan Program for low and moderate income households is utilized to further fair

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<sup>31</sup> Id. (also citing the LIHTC federal statutory requirement (26 U.S.C. § 43) that states adopt site preferences for development in low income areas only if the housing "contributes to a concerted community revitalization plan").

<sup>32</sup> DHCD will examine modifying QAP scoring to increase points for:

- 1) census tracts with low poverty rates;
- 2) communities with less than 10% subsidized housing stock;
- 3) projects with greater than three bedrooms;
- 4) projects that incorporate universal design and/or visitability;
- 5) projects that restrict greater than 10% of units for households at or below 30% of the area median income;
- 6) Fair housing points, and/or requiring affirmative fair housing activity from communities seeking points for local support.

housing opportunity and to reduce the risks of predatory lending that such households (which are disproportionately represented by minorities) face.

Thus far in 2007, the Massachusetts Housing Partnership identified resources for increasing funding for the Soft Second Loan Program, and the Patrick Administration announced that it will target \$500,000 to eligible low- and moderate-income wage earners across the Commonwealth through the state's Individual Development Account (IDA) program, which is designed to help households reach economic self-sufficiency with the goal of ultimately achieving homeownership.

B. *Support housing mobility towards low poverty areas*

See section on mobility above.

C. *Promote equity in public transportation access*

Limited access to public transportation has a disproportionate impact on racial and ethnic minorities and lower income households with respect to housing choice and employment opportunity (see the Data Analysis section of this report for further discussion). Identification of areas of potential public transportation routes that link areas of job growth to minority concentrated and lower income neighborhoods is needed.

The Urban Land Institute has offered the recommendation that "the majority of the housing units that will be built in the greater Boston region during the next decade should be concentrated within reasonable walking distance of existing and planned MBTA rapid transit and commuter rail stations."<sup>33</sup> However, such housing development should be oriented around existing and planned transit in a fair manner so as to avoid creating and perpetuating the segregation of racial/ethnic minorities, the elderly and disabled, and lower income individuals. Furthermore, the Urban Land Institute's recommendation that cities, towns, and developers foster transit oriented development near existing and planned MBTA stations should be carefully devised in such a fair manner as well. Transit oriented development should also link areas of job growth to areas of low income affordable housing, so as to expand the geography of job opportunity.

Noting insufficient transit options in suburban locations, the FHAP recommended that DHCD encourage smart growth development near mass transit, citing in particular that the MGL c. 40R regulations affirmatively acknowledge fair housing requirements. DHCD

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<sup>33</sup> *On the Right Track: Meeting Greater Boston's Transit and Land Use Challenges*. Report and Recommendations of the Urban Land Institute Boston District Council. May 2006.

concur with this recommendation and seeks to advance transit-oriented development (TOD) through the TOD bond program as well as MGL c. 40R, 40B, and other housing development funding programs, and will more fully integrate the principles of fair housing (as developed by the FHAP) throughout its housing programs.

DHCD has partnered with the Executive Office of Transportation and the Office for Commonwealth Development to broaden transportation access by forming the Transit-Oriented Development (TOD) Infrastructure and Housing Support Program, which funds pedestrian improvements, bicycle and parking facilities, and housing projects within a ½ mile of transit stations. DHCD will continue to explore methods for linking transportation to existing and future low, very low, and extremely low income housing pursuant to the Commonwealth's Principles of Sustainable Development.<sup>34</sup>

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<sup>34</sup> **1) Concentrate Development and Mix Uses.** Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources, and integrates uses. Encourage remediation and reuse of existing sites, structures, and infrastructure rather than new construction in undeveloped areas. Create pedestrian friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open spaces and homes; **2) Advance Equity.** Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning and decision making to ensure social, economic, and environmental justice. Ensure that the interests of future generations are not compromised by today's decisions; **3) Make Efficient Decisions.** Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship; **4) Protect Land and Ecosystems.** Protect and restore environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open spaces and recreational opportunities; **5) Use Natural Resources Wisely.** Construct and promote developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials; **6) Expand Housing Opportunities.** Support the construction and rehabilitation of homes to meet the needs of people of all abilities, income levels, and household types. Build homes near jobs, transit, and where services are available. Foster the development of housing, particularly multifamily and smaller single-family homes, in a way that is compatible with a community's character and vision and with providing new housing choices for people of all means; **7) Provide Transportation Choice.** Maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality. Prioritize rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking. Invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with smart growth objectives; **8) Increase Job and Business Opportunities.** Attract businesses and jobs to locations near housing, infrastructure, and transportation options. Promote economic development in industry clusters. Expand access to education, training, and entrepreneurial opportunities. Support the growth of local businesses, including sustainable natural resource-based businesses, such as agriculture, forestry, clean energy technology, and fisheries; **9) Promote Clean Energy.** Maximize energy efficiency and renewable energy opportunities. Support energy conservation strategies, local clean power generation, distributed generation technologies, and innovative industries. Reduce greenhouse gas emissions and consumption of fossil fuels; **10) Plan Regionally.** Support the development and implementation of local and regional, state and interstate plans that have broad public support and are consistent with these principles. Foster development

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projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the Commonwealth.

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